

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VANESSA BROWN and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Syracuse, NY

*Docket No. 01-456; Submitted on the Record;  
Issued October 11, 2001*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant established a recurrence of disability commencing January 31, 2000 causally related to her employment injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration without merit review of the claim.

The Office accepted a left carpal tunnel syndrome causally related to appellant's work activities as a file clerk. Appellant returned to a light-duty position in May 1997. By decision dated January 27, 1999, the Office determined that appellant had no loss of wage-earning capacity based on her actual earnings.

On February 7, 2000 appellant filed a notice of recurrence of disability as of January 31, 2000. In a decision dated March 28, 2000, the Office denied the claim. By decision dated June 15, 2000, the Office denied modification of the prior decision. In a decision dated October 20, 2000, the Office determined that the evidence submitted on reconsideration was insufficient to warrant merit review of the claim.

The Board finds that appellant has not established a recurrence of disability commencing January 31, 2000.

When an employee, who is disabled from the job she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>1</sup>

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<sup>1</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

The Board notes that the Office issued a wage-earning capacity decision on January 27, 1999 based on appellant's actual earnings in a light-duty position. Modification of the wage-earning capacity determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated or the original determination was, in fact, erroneous.<sup>2</sup> The burden of proof is on the party attempting to show a modification of the wage-earning capacity determination.<sup>3</sup>

In this case, the evidence of record is insufficient to meet appellant's burden of proof. In a treatment note dated February 4, 2000, Dr. John Cambareri noted tenderness in appellant's left neck, shoulder and wrist; he diagnosed chronic pain in the left arm, "etiology unclear." Dr. Cambareri indicated that he would place appellant off work based on the subjective complaints. On March 3, 2000 Dr. Cambareri stated that appellant had evidence of nerve conduction delay in the left arm, cervical spondylosis and subacromial impingement syndrome. He opined that "the injury that occurred at work at the [employing establishment] on or about January 20, 1997 was the competent producing cause of the current problem with her left upper extremity and neck."

In a report dated May 1, 2000, Dr. Cambareri reported that appellant developed pain in the left neck, shoulder, arm and elbow at work on January 20, 1997. He diagnosed cervical sprain, impingement syndrome of the shoulder, subacromial tendinitis of the shoulder, lateral epicondylitis of the elbow and tendinitis of the forearm. Dr. Cambareri opined that the January 20, 1997 injury was the cause of her current problems, stating that "[appellant's] work involved lifting heavy medical records, reaching the computer and pulling and filing and all of these activities resulted in her condition."

None of the conditions diagnosed by Dr. Cambareri has been accepted as employment related. Appellant must first establish the specific diagnosis as employment related, and then establish a period of disability for work causally related to the employment injury. The May 1, 2000 report of Dr. Cambareri is of diminished probative value because it is not well reasoned or based on a complete and accurate background. The physician did not discuss the relevant factual history, which indicates that appellant has worked light duty since May 1997. Dr. Cambareri referred to an injury on January 20, 1997, but appellant's claim is based on work activities over more than a single workday. Dr. Cambareri did not discuss any medical treatment for appellant's neck and shoulder or provide medical reasoning on the causal relationship between the diagnosed conditions and the specific work activities noted. The Board finds the evidence of record is insufficient to meet appellant's burden of proof.

The Board further finds that the Office properly denied appellant's request for reconsideration.

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<sup>2</sup> *Sue A. Sedgwick*, 45 ECAB 211 (1993).

<sup>3</sup> *Id.*

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,<sup>4</sup> the Office's regulations provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a specific point of law, or (2) advancing a relevant legal argument not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>5</sup> Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.<sup>6</sup>

With her request for reconsideration, appellant submitted a July 24, 2000 report from Dr. Cambareri. In this report he again opines that appellant has left arm and cervical injuries causally related to a 1997 work injury, without providing any new and relevant explanation in support of this opinion. The Board finds that the evidence submitted was not new and pertinent evidence. Appellant did not meet any of the requirements of section 10.606(b)(2), and therefore her request for reconsideration is not sufficient to warrant reopening the claim for merit review.

The decisions of the Office of Workers' Compensation Programs dated October 20, June 15 and March 28, 2000 are affirmed.

Dated, Washington, DC  
October 11, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>4</sup> 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

<sup>5</sup> 20 C.F.R. § 10.606(b)(2).

<sup>6</sup> 20 C.F.R. § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).